

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BD. OF TRUSTEES OF THE IBEW
FUND LOCAL NO. 82 PENSION
FUND, *et al.*,

Plaintiff,

v.

BRIGHT STREET, LLC, *et al.*,

Defendant.

:

:

:

Case No. 3:16-cv-481

JUDGE WALTER H. RICE

DECISION AND ENTRY SUSTAINING MOTION TO STRIKE PROOF
OF SERVICE AND QUASH AMENDED SUMMONS ON THIRD
PARTY COMPLAINT (DOC. #37) AND ORDERING THIRD PARTY
PLAINTIFF TO COMPLY WITH FED. R. CIV. P. 4(e)(1) AND LOCAL
RULE S.D. OHIO CIV. R. 4.2 WITHIN 14 DAYS FROM DATE OF
DECISION AND ENTRY

Third-Party Defendant International Brotherhood of Electrical Workers,
Local Union 82 ("IBEW Local 82"), has entered a limited appearance and moved
this Court for an Order striking the Proof of Service filed by Third-Party Plaintiff
Security Fence Group, Inc. ("Security Fence"), and quashing the returned
Amended Summons on a Third-Party Complaint as improperly served. (Doc. #37)
No responsive pleading by Security Fence has been filed. For the reasons set forth
below, the motion is sustained.

On January 26, 2018, Security Fence filed its Amended Third-Party
Complaint (Doc. #32) against IBEW Local 82. On that same date, Security Fence

filed an amended summons on its Amended Third-Party Complaint with the office of the Clerk of Courts. (Doc. #33). On February 13, 2018, the signed Amended Summons was filed along with a completed Proof of Service signed by counsel for Security Fence and included what appears to be a copy of the certified mailing form. (Doc. #36). According to the Proof of Service filed with the Court and signed by counsel for Security Fence, service was completed by certified mail by counsel for Security Fence on February 2, 2018.

IBEW Local 82, however, contends that service has not yet been perfected and no waiver of service requested. Doc. #37, PAGEID#968. IBEW Local 82 cites this Court to Fed. R. Civ. P. 4 (e)(1) and S.D. Local Rule 4.2, as well as case authority stating that certified mail service of a summons and complaint must be completed by the Clerk of this Court and not the attorney for one of the parties. *Bds. of Trs. of Ohio Laborers' Fringe Programs v. Excel Contr., Inc.*, No. 2:09-cv-754, slip op. at 1-2 (Oct. 19, 2009) (certified mail sent by party's attorney improper).

This Court has reviewed the authorities cited by IBEW Local and agrees that service has not yet been perfected and that Security Fence should attempt to obtain a waiver of service of process under Fed. R. Civ. P. 4(d) before attempting service of process. S.D. Ohio Civ. R. 4.2. Only if a waiver is unable to be obtained, should said party attempt service of process per Rule 4.2.

For the above reasons, the motion to strike the proof of service and quash the returned Amended Summons on the Third- Party Complaint (Doc. #36) is

SUSTAINED. Security Fence will have 14 days from this filing to serve properly IBEW Local 82 with the Amended Third-Party Complaint.

Date: September 18, 2018



WALTER H. RICE
UNITED STATES DISTRICT JUDGE